IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32(2) (b)

Description of Case

Special Appeal No. 148 of 2006

Date of decision :-05.12.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-05.12.2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Special Appeal No.148 of 2006

1. Uttaranchal Jal Sansthan, Dehradun
   through its Chief General Manager
2. General Manager, Uttaranchal Jal Sansthan
   (Kumaon), Nainital
3. Executive Engineer, Uttaranchal Jal Sansthan
   Champawat .....Appellants

Versus

Amar Singh S/o Late Sri Maha Singh
R/o village Barakot, Tehsil Barakot
District Champawat .....Respondent

Delivery of Judgment :-05th December, 2006

Mr. J.P. Joshi learned Standing Counsel for appellants.
Mr. Rakesh Kumar Joshi learned counsel for respondent-Amar Singh.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This special appeal under Rule 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 21.03.2006 passed by the learned Single Judge of this Court in Writ Petition No.1573(S/S)2005 Amar Singh Vs. Uttaranchal Jal Sansthan & others, whereby the learned Single Judge has allowed the petition and directed the authority concerned to treat the services of the petitioner-Amar Singh as regular and not as a workcharge employee.

2. A writ petition bearing No.1573/2005(S/S) was filed before the learned Single Judge by the petitioner-Amar Singh (now 'respondent' in Special Appeal) for the following reliefs:-

(i) Issue a writ, order or direction in the nature of mandamus commanding the

respondents to regularize the services of the petitioner to the post of Chaukidar from the date of his initial appointment.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the regular pay scale to the petitioner alongwith other consequential benefits.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay arrear of pay scale of the post of Chaukidar.

(iv) Issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(v) Allow the writ petition with cost.

3. The father of the petitioner late Sri Maha Singh was initially appointed in the Local Self-Government Technical Department on 01.08.1972. Thereafter, Kumaon Jal Sansthan was constituted under the provisions of U.P. Water Supply & Sewerage Act, 1975 and consequently on 02.10.1975 the employees working in the Local Self-Government were transferred to Kumaon Jal Sansthan including the father of the petitioner. The father of the petitioner had continuously worked in the workcharge establishment till his death. He died in harness on 14.09.1996 leaving behind his son(petitioner) and his wife. Thereafter, the petitioner being the son of the deceased was appointed under the provisions of Dying-In-Harness Rules 1974 **(hereinafter referred as '1794 Rules')** by the

General Manager, Kumaon Jal Sansthan on the post of Chaukidar on a consolidated pay of Rs.925/- p.m. in the workcharge establishment on 09.11.1998. In pursuance of the said appointment order, he joined in the office of Executive Engineer, Jal Sansthan, Champawat. Thereafter, he was transferred to other places. The petitioner has been continuously working in the Jal Sansthan since 1998. The petitioner has further pleaded in his petition that the appointment under the provisions of the Dying-in-Harness Rules, 1974 is permanent in nature and the appellants (Jal Sansthan) were under the obligation the appoint the petitioner on regular basis and they were also under the obligation to pay the regular pay scale alongwith other consequential benefits. It was further alleged that since the petitioner has been continuously working in the department for more than six years, hence he is also entitled for equal pay for equal work. It was further pleaded in the petition that the services of the petitioner has not been regularized by the Jal Sansthan inspite of his several representations. Hence, the writ petition was filed before this Court.

4. The Uttaranchal Jal Sansthan had not filed any counter affidavit in the said writ petition inspite of opportunities given to them by the learned Single Judge.

5. After hearing the parties, the learned Single Judge had allowed the petition vide order dated 21.03.2006. It was held that the father of the petitioner had been working as work charge employee in the Jal Sansthan and after his death the petitioner was given appointment on workcharge basis under the Dying-in-Harness Rules. The learned Single Judge directed the authority

concerned to treat the petitioner as regular employee and not as workcharge employee.

6. Felling aggrieved by the said order, the present special appeal has been preferred by the appellants-Uttaranchal Jal Sansthan.

7. Heard learned counsel for the parties and perused the record.

8. Learned counsel for the appellants (Jal Sansthan) contended that the learned Single Judge did not appreciate the fact that the petitioner was never appointed by the department under 1974 Rules and he was not entitled for compassionate appointment. It was further contended that on the written request of the petitioner, he was engaged in the work charge establishment as a daily wager. Learned counsel for the petitioner-Amar Singh on the other hand contended that the petitioner being the son of the deceased-late Sri Maha Singh was appointed in the work charge establishment on daily wage basis on 09.11.1998 in the office of the Executive Engineer, Jal Sansthan, Champawat. The petitioner being the son of the deceased has applied for the appointment under die-in-harness and the appellants (Jal Sansthan) provided him an appointment under the Dying-in-Harness Rules, 1974. It was further contended on behalf of the petitioner that the appointment provided under the 1974 Rules would be treated as a permanent appointment and not as a work charge on daily wages in the establishment. Contrary action of the appellants giving appointment to the petitioner as workcharge employee

was in gross contravention of the settled proposition of law.

9. Now, we have to see as to whether the father of the petitioner was a Government servant or he was only a daily wager in the work charge establishment. Learned counsel for the appellants contended that the father of the petitioner was appointed as ‘Fitter’ in the workcharge establishment on daily wage basis and he had been working as workcharge employee till his death. Learned counsel for the petitioner contended that the father of the petitioner was a Chaukidar in the workcharge establishment and as such the petitioner was appointed in the establishment under 1974 Rules. Learned counsel for the petitioner contended that the appellants had not filed any counter affidavit and they cannot assail the grounds taken by the petitioner in his petition. Learned counsel for the appellants submitted that there was no need to file counter affidavit because the petitioner has himself mentioned in his petition that his father was a workcharge employee. It was further contended that the documents filed in the writ petition by the petitioner are sufficient to establish that the father of the petitioner had been working as work charge employee on daily wage basis. It is not disputed that the petitioner had submitted an application dated 13.01.2005 (Annexure-4 to the writ petition) in which he has admitted that his father was working as Fitter in the workcharge establishment from 1.8.1972 to 14.09.1996. The said application is sufficient to establish that the father of the petitioner was a workcharge employee. Apart this, by way of order dated 16.11.1998 (Annexure-3 to the writ petition) the petitioner was posted in the office of Assistant Engineer, Lohaghat.

The expression made in the said order is that ***"Sri Amar Singh S/o late Sri Maha Singh Former Workcharge Fitter".*** Order dated 09.11.1998 (Annexure-2 to the writ petition) by which the petitioner was appointment in the establishment also shows that the father of the petitioner was a workcharge employee in the establishment. The workcharge employees in the establishment are appointed only on daily wage basis. Thus, it is amply established from the documents produced by the petitioner that the father of the petitioner had worked in the workcharge establishment as a daily wager.

10. Now, we have to see as to whether the appointment of the petitioner was made under the Dying-in-Harness Rules, 1974 or it was made otherwise. It is not disputed that the petitioner was appointed on the post of Chaukidar on daily wage basis in the workcharge establishment in the year 1998 by the General Manager, Jal Sansthan. It was contended by the learned counsel for the appellants that the petitioner was never appointed under the provisions of 1974 Rules. Perusal of the appointment letter issued to the petitioner clearly reveals that he was appointed under the G.O. No.3619/9.3.1998-237W/97 dated 15.10.1998. The appointment letter itself shows that he was never appointed under the provisions of Dying-in-Harness Rules, 1974. The aforesaid Government Order by which the petitioner was appointed is as under:-

> "l[;k 3619@9&3&98&237 MCy@97
> सेवा में,
> 1. निदे ाक, स्थानीय निकाय, उ0प्र0, लखनऊ।
> 2. समस्त मुख्य नगर अधिकारी, नगर निगम, उत्तर प्रदे ा।
> 3. समस्त महाप्रबन्धक, जल संस्थान, उत्तर प्रदे ा।

4. समस्त अधि ाासी अधिकारी, नगर पालिका परिषद्, उत्तर प्रदे ा।

नगर विकास अनुभाग–3 लखनऊ : दिनांक 15 अक्टूबर, 1998

fo"k;%] çn k d leLr ty lLFkkuk e dk;jr dk;&çHkkfor depkfj;k dh lokdky e eR;q gk tku ij mud vkfJrk dk dk;çHkkfjr vf/k"Bku e lok;kftr fd;k tkukA

महोदय,

उपर्युक्त विषय की ओर आपका ध्यान आकृष्ट करते हुए मुझे यह कहने का निर्दे ा हुआ है कि इस सम्बन्ध में विभिन्न जल संस्थानों से प्राप्त प्रस्ताव पर न्यायिक विचारोपरान्त एवं इन कर्मचारियों के असामयिक निधन के फलस्वरूप उनके परिवार के साथ कठिनाइयों को दृष्टिगत रखते हुए शासन ने यह निर्णय लिया है कि इससे कार्यप्रभावित कर्मचारियों, जिनकी कार्यप्रभावित अधिष्ठान में कुल निरन्तर 10 वर्ष या उससे अधिक सेवा हो गई हो के सेवाकाल में असामयिक निधन हो जाने पर उनके एक आश्रित पत्नी या पति, पुत्र अथवा अविवाहित पुत्री को मानवीय आधार पर उनकी शैक्षिक योग्यता के अनुसार कार्यप्रभावित अधिष्ठान में ही ऐसे पदों पर जो लोक सेवा आयोग की परिधि में न हो, सेवायोजन प्रदान किया जाये। ऐसे आश्रितों के लिए कार्यप्रभावित अधिष्ठान में भर्ती के समय निर्धारित प्रक्रिया लागू नहीं होगी तथा उनके मामलों में आव यकतानुसार आयु सीमा भी ि ाथिल की जा सकेगी। मृतक आश्रित को कार्य प्रभावित अधिष्ठान में नियुक्ति देने के आदेश सम्बन्धित मुख्य नगर अधिकारी, महाप्रबन्धक, जल संस्थान एवं अधि ाासी अधिकारी, नगर पालिका परिषद् के स्तर से ही प्रसारित किये जायेंगे। यह अनुकम्पा नियुक्ति कार्य प्रभावित/जिस पर मृतक कर्मचारी नियुक्ति थे, के न्यूनतम वेतनमान पर की जायेगी।

भवदीय,

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वि ोष सचिव।"

11. The aforesaid G.O. provides that the work charge employee who died in service and had completed 10 years of service his dependant may be given compassionate appointment in the establishment as workcharge employee on daily wages. The said G.O. is a concession to the employees who died as daily wager working in the work charge establishment and the necessity of issuing the said G.O. seems to have been that the work charge employees were not being covered be by 1974 Rules and as such some concessions were given to the daily wagers who had worked for the last

10 years. The appointment of the petitioner was made under the relevant provisions of the aforesaid G.O. and not under the provisions of Dying-in-Harness Rules, 1974.

12. The learned counsel for the appellants further contended that the father of the petitioner had worked in the Jal Sansthan as workcharge employee on daily wage basis from 01.08.1972 to 14.09.1996. The father of the petitioner was only a daily wager and as such the petitioner was not entitled to be appointed in the Jal Sansthan under the Dying in Harness Rules. It was further contended that the dependents of the employees, who died in harness and has completed 10 years or more continuous service in work charge establishment are entitled to be appointed under 1974 Rules. Learned counsel for the petitioner refuted the contention and contended that the father of the petitioner was employed as Fitter in the Jal Sansthan as a work charge employee and the petitioner was entitled to get the appointment under the provisions of Dying in Harness Rules.

13. Rules 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 provides as under:-

> ***"5. Recruitment of a member of the family of the deceased. –*** *(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the*

purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person –

i) fulfils the educations qualifications prescribed for the post,

ii) is otherwise qualified for Government service, and

iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner."

14. To attract the provisions of Rule 5 of Dying in Harness Rules, 1974, it is essential to be established that :-

i) the government servant has died in harness after the commencement of these Rules;

ii) the spouse of the deceased Government servant is not already employed under the Central or State Government or Corporation owned by the Central or the State Government; and

iii) the member of his family who is not employed under the Central or State Government or any Corporation owned by the Central or State Government seeking appointment under these Rules fulfils the educational qualifications prescribed for the post and is otherwise qualified for Government service.

15. Rule 5 provide that the compassionate appointment can be given to the dependent of the Government servant. Now, we will have to see who is the "Government servant" under 1974 Rules.

16. **"**Government servant" has been defined under Rule 2 of the 1974 Rules as follows:-

> "2. Definitions.- In these rules, unless the context otherwise requires.-
>
> (a) "Government" means the Government of Uttar Pradesh;
>
> (b) "Government servant" means a person appointed to public services and posts in connection with the affairs of the State of Uttar Pradesh.
>
> Explanation.- A Government servant whose services are placed at the disposal of a company, a corporation, an organization, a local authority, the Central Government or the Government of another State by the U.P. Government, shall, for the purposes of these rules, be deemed to be a Government servant notwithstanding that this salary is drawn from the source other than the Consolidated Fund of Uttar Pradesh.

17. The father of the petitioner was not a regularly appointed employee of the department and he was only a workcharge employee in the department. He worked in the department for more than 10 years. Rules 2(a)(iii) of 1974 Rules also provides that he must have three years continuous service in regular vacancy in such employment. Now, it has to be seen whether the father of the petitioner was working in regular vacancy for a period of continuous three years. The petitioner had pleaded in his petition that his father-late Sri Maha Singh was working on the post of 'Fitter' on daily wage basis since 1972. The petitioner had not pleaded in his

petition that his father had been working continuously for the last three years in the department *against the regular* vacancy. Learned counsel for the petitioner could not demonstrate us that his father had put three years of continuous service *against a regular vacancy.* As such, the petitioner's father cannot be said to be a Government Servant under Rules 2(a)(iii) of 1974 Rules and the son of the deceased is not entitled to get the benefit of Rule 5.

18. It was further contended on behalf of the petitioner that even if no post was available for the appointment of the petitioner under the Dying in Harness Rules, the competent authority should have provided employment by creating a supernumerary post on compassionate ground and the competent authority could not have denied the regular appointment to the petitioner. Learned Counsel for the appellants refuted the contention. It is pertinent to mention here that the appointment in public services on compassionate ground has been carved out as an exception, in the interest of justice, to the general rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. A compassionate appointment is made out of pure humanitarian consideration on account of the fact that unless some source of livelihood is provided the family would not be able to make both ends meet. The whole object of granting such appointment is to enable the family to tide over the sudden crisis. It is also well settled position of law that an appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been

framed by the authority concerned and no person can claim appointment on compassionate grounds in disregard of such rules or guidelines.

19. According to the 1974 Rules, the employment is to be provided on a post in relaxation of normal recruitment rules if such person fulfills the prescribed qualification. Thus, the provisions clearly provide that there must be some vacancy available at the time of the appointment. The petitioner had not alleged in his petition that a vacancy was available at the time of the submission of the application to the competent authority. The appointment under the Dying in Harness Rules, 1974 being an exception to the general rule of the appointments to be made by due process, the Courts should not direct compassionate appointment as a matter of course without strict adherence of the rules.

20. The Apex Court, in the case of **Umesh Kumar Nagpal Vs. State of Haryana 1994 (4) SCC p/138,** held in paras 2 and 4 :-

> "2. .....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in

Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lower posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution.

3. .....

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in post above Class III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain Vs. Union of India has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his

dependant nor the post which he held is relevant."

21. Rule 8(3) of the 1974 Rules provides that the appointment will be made against the existing (available) vacancy. There was no averment in the petition that the vacancy was available. In the case in hand, the petitioner was not entitled even though the vacancy was available in the regular department as the father of the petitioner was not a Government servant within the definition of 1974 Rules as such he was not entitled to be appointed under the Dying in Harness Rules. In view of the above, he was never appointed under the provisions of the Dying in Harness Rules. As such, he is not entitled to get compassionate appointment.

22. Learned counsel for the appellants further contended that the learned Single Judge has erred in holding that the appointment of the petitioner should be treated in the regular vacancy. The petitioner had also claimed that the petitioner has a vested right to get the equal pay for equal work. The appellants are treating the petitioner unfairly by giving him less wages in comparison with those directly recruited who are getting more wages or salaries for doing the similar work. Learned counsel for the appellants refuted the contention. The petitioner was employed on daily wage basis in the Jal Sansthan. It is not the case of the petitioner that the wages agreed upon was not being paid by the appellants. The appointment letter of the petitioner clearly reveals that the appointment of the petitioner was made on a consolidated pay of Rs.925/- per month in the work charge establishment as daily wager. The appointment letter itself shows that he was

appointment as a daily wager in the establishment. The petitioner was a daily wager and he cannot claim that he is discriminated as against those who have been regularly recruited on the basis of the relevant rules. The petitioner has no right to claim the equal pay for equal work. When any person is appointed as daily wager, he knows the nature of his appointment and the wages he would get after his engagement. He accepts the employment knowing the consequence of the employment. He also knows that he had been appointed by the appointing authority without any process being undertaken for selection and he had deprived a number of persons who were aspirant of the employment. He very well knows that he had got the employment with the sympathy of the appointing authority. Thus, he would be ready to face the consequences of the employment which he had received in relaxation of the authorities and behind the back of constitutional scheme. Thus, such employees create a class itself and they cannot claim party with the duly appointed employees under the constitutional scheme. It has been held in **Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991** that :-

> *"39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by*

themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

23. It was further contended by the learned counsel for the petitioner that the father of the petitioner had worked for more than 10 years in the establishment, but his father had not been regularized by the department. It was further contended that the department should have regularized the father of the petitioner. Thus, the act of the department was illegal and discriminatory. It was further contended that the petitioner's father shall be deemed to have been regularized. Learned counsel for the appellants refuted the contentions. Perusal of the record reveals that the petitioner's father was a daily wage employee till he died. A daily wage employee had no enforceable right to be absorbed in service. Thus, it

cannot be held that the service of the petitioner's father would be deemed to have been regularized. A daily wager employee cannot be held regularized till the order of regularization had been passed by the competent authority under the Rules framed under the Constitution of India.

24. It is well settled position of law that it is not open to the High Court to exercise its discretion under Article 226 of the Constitution of India to issue mandamus directing the State or its instrumentalities to regularize the service of adhoc/daily wage/casual employees who had not been appointed by following the due procedure. A mandamus can not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent. The husband of the petitioner had no enforceable right to seek his absorption in the department. It has been held by the Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991** that:-

> *"43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the*

aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

25. In the **State of Haryana & others Vs. Rani Devi & another 1996(5) SCC 308,** it has been held that the High Court should not direct the authorities to appoint the claimant on compassionate ground when admittedly the deceased was working as apprentice for a limited period. If the scheme regarding appointment on compassionate ground is extended to all sorts of casual, adhoc employees including those who are working as Apprentices, then such scheme cannot be justified on constitutional grounds. It need not be pointed out that appointments on compassionate grounds are made as a matter of course, without even requiring the person concerned to face any selection committee. In the case in hand, the petitioner's father was appointed on daily wages. He had no right to be absorbed in the regular service. He had not worked for three continuously *against a regular vacancy.* Therefore, the petitioner's son was not entitled to be appointed on compassionate ground. Merely being a dependent of an ex-employee would not be entitled to seek appointment on compassionate grounds. The court cannot grant any relaxation for the same. The court cannot provide appointment under die-in-harness. The right to be appointed on compassionate ground cannot be claimed as a right of heritance irrespective of the nature of service rendered by the deceased. Such appointments on compassionate ground have to be made in accordance with Rules, Regulations taking into

consideration the financial condition of the family of the deceased.

26. It is well settled position of law that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of daily wage employees who by the very nature of their appointments, do not acquire any right. In view of the above, we do not find any substance in the argument advanced by learned counsel for the petitioner.

27. In Umadevi (supra), it has been held that the appointment made dehors the rules would not confer any right to the claimant. It would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has been engaged or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. It has not been stated anywhere in the petition that his father was appointed according to the Rules of the appointment made by the department in this behalf. His father was a daily wager workcharge employee and as such it cannot be held that he was legally appointed to a public service. In view of the above discussion, the petitioner's father was not a

Government servant. As such, the petitioner is not entitled to get an appointment under the Dying in Harness Rules.

28. In view of the foregoing discussion, the Special Appeal deserves to be allowed and is hereby allowed. Therefore, the order dated 21.03.2006 passed in Writ Petition No.1573(S/S)/2005 is set aside and Writ Petition No.1573(S/S)/2005 is dismissed. Parties shall bear their own costs in both the courts.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 05th December, 2006

LSR